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June 25, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Amendment of Section 90.494 of the Commission's
Rules and Regulations Concerning Shared Use of
900 MHz Paging Frequencies, Docket No. RM-7986

Dear Ms. Searcy:

Transmitted herewith on behalf of Metagram America Inc. is an original and four copies of Reply Comments of Metagram America Inc. in the above-referenced proceeding.

Please communicate directly with the undersigned counsel should there be any questions.

Respectfully submitted,



David J. Kaufman

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cc (w/encl.): Metagram America Inc.
Service List

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 90.494 of) RM-7986
the Commission's Rules and)
Regulations Concerning Shared Use)
of 900 MHz Paging Frequencies)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS OF METAGRAM AMERICA INC.

Metagram America Inc. ("Metagram"), by its attorneys and pursuant to §1.405(b) of the Commission's Rules, hereby responds to various comments submitted regarding the above-referenced "Petition for Rule Making" filed by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. (hereinafter "APCP"), on April 24, 1992.

Metagram is a PCP licensee serving 32 markets with over 200 base stations operating on 929.9875 MHz, a frequency reserved for regional or nationwide PCP use. Metagram agrees for the most part with the comments submitted by Dial-A-Page, Paging Network, Inc, and PacTel Paging supporting the concept of PCP frequency exclusivity. However, different qualification standards than those proposed by APCP are required to avoid speculators and frequency warehousing. The focus should be on true investment and on loading, not merely on base stations. Metagram disagrees with the positions taken by Dial-A-Page and Mobile Telecommunication Technologies Corp. that there should be no exclusivity at all for national PCP systems.

Metagram believes that those companies, such as Metagram, that already have invested heavily in constructing and operating 929 MHz PCP systems should be rewarded, and that any rule which would either freeze out this pre-existing investment or preclude co-channel expansion of large, pre-existing PCP systems, would be anathema to the public interest. Accordingly, Metagram cannot support the specific APCP proposal, but Metagram could support 929 MHz exclusivity with slight modifications.

Discussion

APCP's proposal for exclusive 900 MHz PCP frequency use is based on a sound premise. As amply discussed in several of the comments, frequency sharing has the inherent potential for frequency congestion and can serve as a deterrent or disincentive to PCP system expansion or growth. Exclusive frequency use would foster wide-area and nationwide paging operations.

However, the parameters for determining the award of frequency exclusivity set forth in APCP's proposal are arbitrary. Not only are they inadequate to protect against frequency warehousing and speculators, especially with regard to nationwide PCP systems, but they would punish existing nationwide operators such as Metagram. For instance, under APCP's proposal, a large RCC operator with 300 locations transmitting on 931 MHz could program its transmitters to operate on both the pre-existing 931 MHz RCC frequency and a 929 MHz PCP frequency, and be awarded national exclusivity of that PCP frequency with minimal expenditures and without having any customers. Or, a PCP licensee could build 300

transmitters in a single concentrated area of the country, be awarded nationwide frequency exclusivity, and effectively freeze out PCP operators in the remainder of the country respecting that PCP frequency. However, Metagram, which has been in operation for years in all regions of the United States with over 200 base stations (but less than 300 base stations) could be foreclosed from operating much less expanding its existing 929.9875 MHz system.

The Commission should establish more rational parameters for the award of frequency exclusivity than those proposed by APCP. In addition to requiring the construction of a threshold number of transmitters (depending on whether the PCP operator is seeking local, regional or national exclusivity) with specific technical properties pursuant to strict construction schedules, PCP operators should also be required to meet specific minimum loading requirements. Meeting a loading requirement demonstrates a need for the frequency and that the frequency is being used, thus ensuring that a frequency is not being warehoused.

Moreover, loading must be measured on a per-channel basis, not on a per-transmitter basis, because a subscriber subscribes to the entire wide-area (or regional or national) system, not to a single base station. Messages are typically simulcast over multiple base stations, and it is this simulcast capability that the customer bargains for. The Commission should establish a minimum loading requirement of 7,000 subscribers per regional system, and 10,000 subscribers per nationwide system.

For nationwide systems, the minimum number of transmitter locations should be 200, to allow for the "grandfathering" of existing 900 MHz PCP pioneers such as Metagram. In addition, the Commission should require that these transmitters be located in at least 25 separate markets with at least one market being located in each of the five separate regions of the United States already established by the Commission for the Rural Service Area cellular markets.¹ By adopting this requirement, the Commission can ensure that the frequency is being used on a nationwide basis.

Finally, if the Commission adopts APCP's proposal as modified herein, those existing PCP pioneers who are currently operating in the 900 MHz band and meet the threshold transmitter construction and loading requirements should be awarded immediate frequency exclusivity.² Any such grandfathered exclusivity, however, should be based on the number of transmitters a PCP operator has constructed and the number of subscribers loaded on the system *prior to* May 11, 1992, the date of the Public Notice of APCP's Petition for Rule Making. The number of transmitters constructed and the number of subscribers loaded on a system *after* that date should not be considered when determining which PCP

¹ See Public Notice, Report No. CL-88-110, released May 19, 1988, copy of 1st page attached hereto as Attachment A, which defines these five geographic regions. The District of Columbia is the only unlisted jurisdiction. Metagram proposes that the District be placed in Region 4, which already contains Maryland and Virginia.

² These pioneers, such as Metagram, should be named and awarded grandfathered exclusivity directly by the Report and Order adopting the modified APCP proposal.

systems should be grandfathered and awarded immediate frequency exclusivity.³ The Commission would be assured thereby that it is not awarding grandfathered frequency exclusivity to speculators.

In no event would it be fair to Metagram, which has spent millions of dollars developing its existing 929.9875 MHz PCP system serving thousands and thousands of customers across the country, to establish frequency exclusivity and to deny Metagram the unfettered right to continue to expand on this single frequency at its own pace as dictated by demand. It would be better to leave the status quo in place than to establish a new regulatory regime that could allow a competitor to obtain nationwide or regional exclusivity on 929.9875 MHz, where Metagram now has over 200 locations serving a subscriber base in five figures. Such a retroactive change would chill other potential pioneers (in PCP and other services) from moving into new and unproven spectrum.

Conclusion

929 MHz PCP frequency exclusivity, if established in a proper framework and with due regard for pre-existing pioneers, will encourage the development of wide-area and nationwide PCP operations. While APCP's proposal for exclusivity of 929 MHz PCP frequencies is based on a sound premise, the qualification standards proposed by APCP are inadequate to protect against speculators and frequency warehousing and inadequate to protect


³ Transmitters constructed and loaded subsequent to the Public Notice date would be considered when determining new awards of frequency exclusivity for non-grandfathered channels.

pre-existing 929 MHz PCP licensees. By modifying APCP's proposal with Metagram's proposal to include specific system loading requirements for each of the regional and nationwide systems, minimum transmitter location requirements for nationwide systems, and a grandfathering procedure, the Commission can ensure that 929 MHz PCP frequencies will not be warehoused and that future entrepreneurs will not be afraid to commit capital to new and unproven areas. Therefore, Metagram respectfully requests that the Commission propose the modified form of exclusivity described herein.

Respectfully submitted,

METAGRAM AMERICA INC.

By: 
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By: 
Lorretta K. Tobin

Its Attorneys

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June 25, 1992

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PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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WASHINGTON, D.C. 20554

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COMMON CARRIER PUBLIC MOBILE SERVICES INFORMATION

LISTING OF CELLULAR RURAL SERVICE AREAS WITH COMPONENT PARTS

Report No. CL-88-110

May 19, 1988

In accordance with the Further Order on Reconsideration in CC Docket No. 85-388 (RM 5167) (FCC 88-156, Released May 18, 1988) the attached list of 428 Cellular Rural Service Areas (RSAs) is being released to the public and will be published in the Federal Register.

Applications for individual RSAs will not be accepted in numerical order as were MSA applications. Since the RSAs are relatively similar in terms of population, and recognizing that each RSA has its unique needs, the Commission divided the country into five geographic blocks with each block containing a like number of RSAs. The Commission further determined that the only equitable method of determining the order in which applications would be accepted would be through some form of random selection. A lottery was, therefore, held to determine the order in which applications would be accepted for each block of RSAs. As a result of that lottery the following order was determined:

1. Block 2	2. Block 5	3. Block 3	4. Block 1	5. Block 4
Alaska	Illinois	Arkansas	Alabama	Connecticut
Arizona	Indiana	Kansas	American Samoa	Delaware
California	Iowa	Louisiana	Florida	Kentucky
Colorado	Minnesota	Missouri	Georgia	Maine
Hawaii	Nebraska	Oklahoma	Guam	Maryland
Idaho	North Dakota	Texas	Mississippi	Massachusetts
Montana	South Dakota		North Carolina	Michigan
Nevada	Wisconsin		North. Marianas	New Hampshire
New Mexico			Puerto Rico	New Jersey
Oregon			South Carolina	New York
Utah			Tennessee	Ohio
Washington			Virgin Islands	Pennsylvania
Wyoming				Rhode Island
				Vermont
				Virginia
				West Virginia

CERTIFICATE OF SERVICE

I, JacLyn Freeman, do hereby certify that I caused a copy of the foregoing "REPLY COMMENTS OF METAGRAM AMERICA INC." to be sent by U.S. mail this 25th day of June, 1992, to each of the following:

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